

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

BASIC METALS, INC., a
Michigan corporation,

Plaintiff,

vs.

Case No. 2015-69-CK

OMNISOURCE CORPORATION,
a foreign corporation, DETROIT
PRECAST, LLC, a Michigan limited
liability company, and WILLIAM HULTS,

Defendants.

OPINION AND ORDER

Defendant Omnisource Corporation (“Omnisource”) has filed a motion to dismiss it from this matter pursuant to MCR 2.116(C)(4). Plaintiff has filed a response and requests that the motion be denied. Omnisource has also filed a reply brief in support of its motion.

Facts and Procedural History

From December 2013 through March 2014, Plaintiff and Defendant Detroit Precast, LLC (“Precast”) operated pursuant to a contract whereby Plaintiff would provide manpower to remove copper wire from a facility located in Detroit, Michigan (“Subject Property”). During that period of time, Defendant Williams Hults (“Defendant Hults”), on behalf of Precast, was also independently loading vehicles and bins with scrap materials (the “Materials”).

After removing the Materials, Defendant Hults and Precast sold them to Plaintiff. Omnisource has since asserted that it holds a security interest in the Materials, and that Plaintiff has converted the Materials by accepting them from Defendant Hults/Precast. On January 14,

2015, Omnisource filed a complaint in the Federal District Court for the Eastern District of Michigan against Plaintiff, case no. 15-10140, alleging conversion (“District Court Action”).

On January 7, 2015, Plaintiff filed its complaint in this matter against Omnisource, Precast and Defendant Hults. The only claim against Omnisource is a claim for declaratory relief seeking an order holding that “Plaintiff is not liable or indebted to Omnisource in any amount.” On March 5, 2015, Omnisource filed its instant motion to dismiss that claim. Plaintiff has since filed a response requesting that the motion be denied. Omnisource has also filed a reply in support of its motion. On March 30, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

Standards of Review

Where no case of actual controversy exists, the circuit court lacks subject matter jurisdiction to enter a declaratory judgment. *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978). MCR 2.605(A) specifically limits the circuit court's power to issue declaratory judgments to actions where there is a case of actual controversy. An actual controversy exists where a declaratory judgment is necessary to guide a party's future conduct in order to preserve his legal rights. *Shavers*, at 588. A case or actual controversy does not exist where the injuries sought to be prevented are merely hypothetical. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 97; 535 NW2d 529, appeal denied 452 Mich 870, 552 NW2d 170, reconsideration denied 452 Mich 870, 554 NW2d 313 (1995). Before affirmative declaratory relief can be granted, it is essential that a plaintiff must allege an actual justiciable controversy. *Shavers*, at 589.

Arguments and Analysis

In support of its motion, Omnisource contends that Plaintiff's claim for a declaratory judgment fails as a matter of law because Plaintiff's claim merely seeks a declaration that it is not liable to Omnisource in connection with the District Court Action.

As a preliminary matter, the Court notes that the District Court Action was filed seven days after Plaintiff filed his complaint, including its claim for declaratory relief, in this matter. Nevertheless, Omnisource contends that a claim for declaratory relief may not be pursued in an effort to obtain a declaration of non-liability with respect to a potential future claim. In support of its assertion, Omnisource cites to various non-binding, but persuasive authorities. See *Morrison v Parker*, 90 F Supp 2d 876, 880 (WD Mich 2000)("[T]he uniform approach of the federal courts is that declaratory relief is generally inappropriate when a putative tortfeasor sues the injured party for a declaration of nonliability."); *Ex parte Valloze*, 142 So 3d 504, 511 (Ala 2013)("[D]eclaratory-judgment actions are not intended to be a vehicle for potential tort defendants to obtain a declaration of nonliability."); *Cunningham Bros. v Bail*, 407 F2d 1165, 1168 (7th Cir 1969)("[I]t is not one of the purposes of the declaratory judgment acts to enable a prospective negligence action defendant to obtain a declaration of non-liability." , quoting *Sun Oil Co v Transcontinental Gas Pipe Line Corp*, 108 F Supp 280, 282 (E D Pa 1952), *aff'd* 203 F2d 957 (3rd Cir 1953); *MNW, LLC v Mega Auto Grp, Inc*, 884 F Supp 2d 740, 764 (ND Ind 2012)("[A] declaratory judgment is not appropriate where a party seeks judgment 'relating to whether its past conduct was performed in good faith,' or in other words 'to preemptively defend against a claim.'" (quoting *Mid-Century Ins Co v Estate of Morris*, 966 NE2d 681, 688-89) (Ind Ct App 2012)); *Hodinka v Delaware Cnty*, 759 F Supp 2d 603, 610 (ED Pa 2011)("Declaratory judgment is inappropriate solely to adjudicate past conduct....[n]or is declaratory judgment meant simply to proclaim that one party is liable to another.")

The Court finds the extensive authority Omnisource has cited persuasive, and hereby holds that Plaintiff's declaratory action must be dismissed. As the Court held in *Ex Parte Valloze*, 142 So 3d, at 511:

The plaintiff has a right to choose a forum. Using declaratory relief in the manner employed by [plaintiff] in these cases deprives tort plaintiffs of this right. It also deprives such plaintiffs, within the confines of the applicable statute of limitations, of the ability to elect the timing for bringing such an action, which may affect a plaintiff's preparation for litigation. Further, such use of declaratory relief reverse[s] the roles of the parties in a way that would jeopardize those procedures which the law has traditionally provided to injured parties by which to seek judicial relief. In short, declaratory-judgment actions are ill suited to resolving tort claims.

For the reasons set forth in *Valloze*, the Court is convinced that Plaintiff's claim for declaratory relief is inappropriate. Consequently, this portion of Omnisource's motion must be granted.

The only other claim in Plaintiff's complaint against Omnisource is its unjust enrichment claim. However, Omnisource did not address Plaintiff's unjust enrichment claim in its original motion. Rather, Omnisource did not address that claim until its reply brief. In its reply brief, Omnisource contends that Plaintiff's unjust enrichment claim fails because Plaintiff did not allege that it retained money or benefits that belong to another.

In Count II of its complaint, Plaintiff alleges that (1) Defendants accepted equipment and labor incident to harvesting/recycling of scrap metal from the Cadillac Facility, (2) Plaintiff provided the services, (3) That Defendants received the benefits of Plaintiff's labor/services, and (4) that it would be inequitable to allow Defendants to retain the benefit of the labor/services Plaintiff provided without compensating Plaintiff. *See* Complaint, at ¶54-58. While the merits of Plaintiff's claim have yet to be determined with respect to any of the Defendants, including Omnisource, the Court is convinced that Plaintiff has properly stated a claim for unjust

enrichment against Omnisource. Consequently, Omnisource's request for summary disposition of Plaintiff's unjust enrichment claim must be denied.

Conclusion

Based upon the reasons set forth above, Defendants' motion to dismiss is GRANTED, IN PART, and DENIED, IN PART. Plaintiff's request for declaratory relief against Omnisource is DISMISSED. Omnisource's request to dismiss Plaintiff's unjust enrichment claim against it is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

/s/ John C. Foster

JOHN C. FOSTER, Circuit Judge

Dated: May 4, 2015

JCF/sr

Cc: *via e-mail only*

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